But he did say "I was jealous about my wife because Da (the woman with whose murder he was charged) would not let me go to the house and because Da wanted Ahmat to marry my wife". "Da refused to allow me to remarry my wife". The accused's evidence disclosed the motive for the crime.

Then it was argued that the accused was insane. The onus is upon the accused to prove that he was insane, Section 105 of the Evidence Enactment. It is true that that onus is not a heavy one. "It is certainly plain that the burden in cases in which an accused has to prove insanity may fairly be stated as not being higher than the burden which rests upon a plaintiff or defendant in civil proceedings". *Sodeman v. Rex* (1936) 2 A.E.R. 1138.

Dealing with the defence of insanity, the trial Judge told the assessors "the balance of probabilities in a civil case is quite sufficient to entitle you to decide a case in a certain direction, and you have got to bear this in mind in making up your decision as to whether or not the accused has proved that he comes within that exception. You have got to bear in mind that the accused has not got to prove his case so thoroughly as you would expect the prosecution to prove theirs".

The medical witness called for the defence did not support the plea of insanity.

In our opinion the case was fully and properly put to the assessors and the accused has not discharged the lesser onus imposed upon him of shewing that he probably was insane.

Even if the confession were excluded, we consider that the assessors could have come to no other conclusion than that the accused was guilty of the murder charged.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]
ROGER HALL, C.J. (F.M.S.) McELWAINE, C.J. (S.S.) AND MURRAY-ANYSLEY, J.
April 1, 1938.

THE OFFICIAL ADMINISTRATOR
(Appellant).
vs.
HAJI ABDUL MAJID BIN SHAKABUDIN
(Respondent).

(PERAK CIVIL APPEAL No. 6 of 1937)

Malay Reservations Enactment (Cap. 142)—Land within Malay Reservation—Debts of deceased—Sale of Land—Probate and Administration Enactment (Cap. 8)—Official Administrator acting Administrator.

The Official Administrator was appointed administrator of the estate of a deceased person. The deceased had interests in certain pieces of land in a Malay Reservation. At the time of her death the deceased was indebted to a Chinese. The Official Administrator took out an Originating Summons asking for an order under section 94 (iii) of the Probate and Administration Enactment for leave to sell the deceased's interest in the aforesaid pieces of land in order to pay the debt to the Chinese.

Held, reversing the decision of Aitken J. [(1937) 6 M.L.J. 227] that what the deceased could have done voluntarily during her life time the administrator could do voluntarily after her death, namely, sell the land to pay a just legal debt.

J. L. Woods for Official Administrator.

M. S. Mahendran for Respondent.

Roger Hall, C.J.—The Official Administrator was appointed by the Order of Court administrator of the estate of Haji Teh Hawa binti Haji Abdulrahman, deceased.

The deceased had interests in certain pieces of land in a Malay reservation to which the Malay Reservations Enactment applies. At the time of her death she was indebted to a Chinese named Ten Lan Neoh. Some of this debt has been paid off but there is still owing by the estate the sum of $2060 odd.

The Official Administrator took out an Originating Summons asking for an order under section 94 (iii) of the Probate and Administration Enactment giving him leave to sell the deceased's interest in the aforesaid pieces of land.

The learned judge seems to have been of opinion that because a creditor could not enforce his claim against the land during the lifetime of the debtor therefore the Official Administrator cannot lawfully sell the lands to pay the debt after the owner's death.

Counsel for the respondent admitted—and in our opinion he was obviously right in admitting—that there is nothing in the Enactment to prohibit a Malay holder of land in a Reservation selling that land to a Malay and using the purchase price to pay off creditors whatever their race.

The land itself, of course, can only be sold to a Malay.

We consider that what the owner could have done voluntarily during her life her administrator can do voluntarily after her death, namely, sell the land in order to pay a just legal debt. This is not a wrongful payment of a debt to which there is a defence.

We express no opinion on the point argued before us that in an administration suit an administrator may be compelled to sell a Malay holding in a Reservation in order to pay debts of the estate, or on what appears to be corollary, whether an owner of a Malay holding could be attached under judgment debtor proceedings for refusal to sell his holding to satisfy a judgment debt.

The appeal is allowed and the case remitted to the Judge at Ipoh to decide whether or not to allow the application for leave to sell the land having regard to the fact that it is not unlawful for the administrator to sell the land to a Malay if he wishes to do so in order to pay the just debts of the Estate.

Costs to both parties to come out of the estate.

Appeal allowed.

[ORIGINAL CRIMINAL JURISDICTION]

CUSSEN, J.

June 5, 1939.

PUBLIC PROSECUTOR v. RAMASAMY.

Criminal Procedure Code (Cap. 6) Ss. 107, 113—statement made in the course of police investigation—inadmissibility in evidence of—first information—admissibility of.

If the fact that an investigation has commenced and is being conducted in some form or other is the cause or occasion of a statement being made, or if the statement results or proceeds from any act done in the investigation, then the statement is made in the course of the investigation within the meaning and intent of, and is inadmissible under, Section 113 of the Criminal Procedure Code.

On the evening of the 4th September 1938, one T., whose death was the subject of enquiry at the trial of this case, was severely injured. On his way to the hospital in a bus a halt was made outside the Sentul Police Station and a Police Constable at the Station was informed of the fact. As T. was severely wounded the bus went straight on to the hospital and the Police Constable made a report in the Station Report Book at 7.20 p.m. A sergeant and a lance corporal were informed of the report. Thereupon investigation commenced and the sergeant proceeded to the hospital to see T. The lance corporal remained on duty in the Station. The accused arrived at the Station at about 7.30 p.m. and spoke to the lance corporal complaining that he had been stabbed by T. The corporal saw that he had a wound on his left arm. Before the lance corporal had time to record the complaint, he received at 7.35 p.m. a telephone call from the sergeant at the hospital. The sergeant enquired if a man named R. had come to the Station. The lance corporal replied in the affirmative. The sergeant then told the lance corporal that T. was in a very serious condition and he ordered the lance corporal .to arrest the man named R. (that is, the accused). Thereupon the lance corporal arrested the accused, telling him that he was being so arrested for causing injuries to T. The arrest was effected at 7.38 p.m. At 7.37 p.m. the lance corporal received instructions by telephone from a Sub-Inspector to record the report of the accused. The lance corporal did so, the report being completed at 7.45 p.m. At the trial of the accused for murder, for the injured man died shortly after the first telephone call from the hospital, counsel for the defence objected to the admission of the report as being a statement made in the course of police investigation.

Held, that in so far as it referred to the complaint of injuries, the statement objected to was in the nature of a first information under section 107 of the Criminal Procedure Code and was admissible in evidence and that, in so far as it was made in reply to the charge made against the accused, the statement was made in the course of a police investigation and should be excluded under section 113 (i) of the Criminal Procedure Code.

CRIMINAL TRIAL.

Davies, Deputy Legal Adviser, and *Draper,* Deputy Public Prosecutor, for the Public Prosecutor.

Rintoul for the Accused.

Cur. Adv. Vult.

Cussen, J.—The Prosecution tenders in evidence a document which contains a statement made by the accused. The contents of this document are clearly relevant in this trial.

Counsel for the Defence objects to the admission of this documentary statement on the ground that it is excluded by section 113 (i) of the Criminal Procedure Code as it is a statement made in the course of a Police investigation.

Section 113 (i) reads—

> "No statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be signed by the person making it, nor shall such statement, save as herein provided, be used as evidence."

That is the only ground on which objection to the admission of this document is based.

The question then which I have to decide is whether this statement is or is not a statement made in the course of a police investigation.

The onus of proving that it is rests upon the Defence.

In order to discharge that onus of proof the most that the Defence has to do is to show that it is probable that the statement was made in the course of an investigation. The difficulty lies in the meaning and application of words "in the course of."

Without attempting anything in the nature of an exhaustive definition of what these words cover this much can, I think, be stated with certainty. If the